

United States District Court, Northern District of Illinois

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| Name of Assigned Judge or Magistrate Judge | Milton I. Shadur | Sitting Judge if Other than Assigned Judge | |
| CASE NUMBER | 01 C 7324 | DATE | 9/26/2001 |
| CASE TITLE | Rafael Roby vs. Sergeants McClain, et al | | |

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

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|------|-------------------------------------|---|
| (1) | <input type="checkbox"/> | Filed motion of [use listing in "Motion" box above.] |
| (2) | <input type="checkbox"/> | Brief in support of motion due _____. |
| (3) | <input type="checkbox"/> | Answer brief to motion due _____. Reply to answer brief due _____. |
| (4) | <input type="checkbox"/> | Ruling/Hearing on _____ set for _____ at _____. |
| (5) | <input type="checkbox"/> | Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____. |
| (6) | <input type="checkbox"/> | Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____. |
| (7) | <input type="checkbox"/> | Trial[set for/re-set for] on _____ at _____. |
| (8) | <input type="checkbox"/> | [Bench/Jury trial] [Hearing] held/continued to _____ at _____. |
| (9) | <input type="checkbox"/> | This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2). |
| (10) | <input checked="" type="checkbox"/> | [Other docket entry] Enter Memorandum Order. Roby is directed to file his application to proceed in forma pauperis on or before October 29, 2001. The Cook County States Attorney's office is directed to file a report in this chambers on or before October 29, 2001 as to whether Roby has indeed exhausted his administrative remedies. |
| (11) | <input checked="" type="checkbox"/> | [For further detail see order attached to the original minute order.] |

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|-------------------------------------|---|---|---|---|
| <input type="checkbox"/> | No notices required, advised in open court. | <div style="text-align: center;"> DOCKETING 01 SEP 28 PM 4:51 </div> | number of notices | <div style="text-align: center;"> Document Number 4 </div> |
| <input type="checkbox"/> | No notices required. | | OCT 1 - 2001 date docketed | |
| <input checked="" type="checkbox"/> | Notices mailed by judge's staff. | | <i>ow</i> docketing deputy initials | |
| <input type="checkbox"/> | Notified counsel by telephone. | | 9/28/2001 date mailed notice | |
| <input type="checkbox"/> | Docketing to mail notices. | | SN | |
| <input type="checkbox"/> | Mail AO 450 form. | | mailing deputy initials | |
| <input type="checkbox"/> | Copy to judge/magistrate judge. | | | |
| SN | | courtroom deputy's initials | Date/time received in central Clerk's Office | |

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED
OCT 1 - 2001

RAFAEL ROBY,

Plaintiff,

v.

SERGEANTS McCLAIN, et al.,

Defendants.

No. 01 C 7324

MEMORANDUM ORDER

This Court's May 22, 2001 memorandum opinion and order ("Opinion") and its subsequent June 11, 2001 memorandum dismissed the pro se 42 U.S.C. §1983 ("Section 1983") complaint brought by Rafael Roby ("Roby") against two sergeants, a correctional officer and a doctor--all of whom work at the Cook County Department of Corrections ("County Jail")--because of Roby's failure to have exhausted his administrative remedies as required by 42 U.S.C. §1997e(a). Now Roby has filed this new action, which advances identical substantive allegations as to the claimed deprivation of his constitutional rights, while he alleges in Complaint ¶III that his administrative remedies have now been exhausted.

This memorandum order will return to the latter subject, but it must first address Roby's noncompliance with the statutory requirements of 28 U.S.C. §1915 ("Section 1915"). Instead he has asked for in forma pauperis treatment by filling out and submitting a form from an Illinois state court--a puzzling lapse

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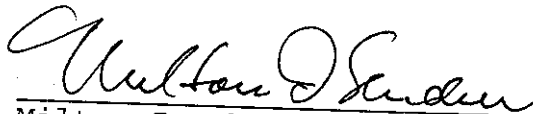
in light of Roby's obvious awareness of (and compliance with) the Section 1915 requirements in conjunction with his earlier action.¹

This Court is therefore transmitting to Roby, together with a copy of this memorandum order, the appropriate forms of Application To Proceed Without Prepayment of Fees ("Application"). Roby is ordered (1) to complete that form in appropriate fashion, (2) to obtain from the personnel at Shawnee Correctional Center (where he is now in custody) and, if necessary, personnel at the County Jail a printout or printouts covering transactions in his trust fund account or accounts for the period from March 1, 2001 to the date or dates of certification and (3) to submit the completed Application and printout or printouts to this Court on or before October 29, 2001. That will enable this Court to make the appropriate determination and calculations under Section 1915.

In the meantime copies of the new Complaint and of this memorandum order are contemporaneously being sent to the Cook County State's Attorney, whose assistants regularly act as counsel for County Jail personnel in Section 1983 actions. This transmittal is intended to enable the State's Attorney's Office

¹ As Roby's current filing reflects, this time he has provided only a self-certification as to his financial condition and his trust fund account, while Section 1915 also requires that input from the correctional institution itself.

to investigate the circumstances of Roby's pursuit of his administrative remedies and to report its view as to whether he has indeed exhausted them so that this action may proceed. That report, as well as Roby's materials ordered in the preceding paragraph, shall be filed in this Court's chambers on or before October 29, 2001, after which this Court will determine the appropriate next proceedings in this action.



Milton I. Shadur
Senior United States District Judge

Date: September 26, 2001